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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

GABRIEL LEOS,

Defendant and Appellant.

B266749

(Los Angeles County
Super. Ct. No. NA096276)

APPEAL from a judgment of the Superior Court of Los Angeles County, Laura L. Laesecke, Judge. Affirmed, as corrected.

Olivia G. Petteno, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler,
Chief Assistant Attorney General, Lance E. Winters,
Assistant Attorney General, Michael C. Keller and Russell

A. Lehman, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Following his plea of no contest to two counts of drunk driving, Gabriel Leos was sentenced to four years, four months in state prison. He contends the trial court erred in imposing sentences on both counts 1 and 2, as the counts arose from a single incident of drunk driving causing great bodily injury to a single victim. Appellant requests that this court remand the matter for resentencing. Respondent concedes that one of the sentences must be stayed, but argues that resentencing is unnecessary, as this court may order the judgment corrected.¹ For the reasons set forth below, we will order the judgment corrected to reflect a sentence of four years, four months on count 1 and stay the same sentence on count 2.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY²

On July 13, 2013, appellant drove into several parked vehicles. As a result of the collision, an occupant of one of

¹ Appellant filed no reply brief addressing respondent's argument.

² As appellant does not challenge the factual basis for his conviction, the facts are taken from the probation officer's report.

the parked vehicles -- Cuauhtemoc Diaz -- suffered a fracture to his right arm. When appellant was arrested shortly after the incident, he exhibited signs of alcohol intoxication.

Appellant was charged by felony complaint with: (1) driving under the influence of alcohol and causing bodily injury to Diaz, in violation of Vehicle Code section 23153, subdivision (a); and (2) driving while having a blood alcohol level of 0.08 percent or more and causing bodily injury to Diaz, in violation of Vehicle Code section 23153, subdivision (b). As to both charged counts, the complaint alleged that appellant personally inflicted great bodily injury (GBI) on Diaz (Pen. Code, §12022.7, subd. (a)).³

On July 23, 2013, after being advised of the possible consequences of a guilty plea, appellant waived his constitutional rights and pled no contest to both charged counts and admitted the GBI allegation on both counts. The court suspended imposition of sentence and placed appellant on formal probation for a period of five years.

At a proceeding held June 30, 2015, appellant admitted to violating the terms of his probation. The trial court revoked probation. Without specifying the charged count, the court sentenced appellant to “state prison low term 16

³ All further statutory citations are to the Penal Code, unless otherwise stated.

months, plus the GBI allegation of three years, which is four years, four months.”⁴

Appellant filed a timely notice of appeal.⁵

DISCUSSION

“Where section 654 precludes multiple punishment and the trial court erroneously fails to stay the terms subject to section 654, the appellate court must stay the sentence on the lesser offenses while permitting execution of the greater offense consistent with the intent of the sentencing court.”

(*People v. Thompson* (1989) 209 Cal.App.3d 1075, 1080.)

Here, the court’s oral pronouncement made no mention of the separate counts. The minute order reflected a sentence imposed on count 1 only, and the abstract of judgment indicated concurrent terms, with the GBI enhancement imposed on count 2. The parties do not dispute that the court intended -- and was authorized -- to impose a total term of four years, four months. They further agree that the court was required to stay imposition of sentence as to one of

⁴ The minute order states: “As to count (01), (2): [¶] Serve 004 years and 004 months in any state prison [¶] Court selects the low term of 016 months as to count 1. [¶] Plus 003 years pursuant to section 12022.7 PC.” The abstract of judgment reflects a low term of 16 months on count 1, a concurrent low term of 16 months on count 2, plus a three-year enhancement for the GBI allegation on count 2.

⁵ Appellant requested and was denied a certificate of probable cause to challenge his admission of a probation violation.

the counts, pursuant to section 654, as both counts arose from a single incident. (See *People v. Subramani* (1985) 173 Cal.App.3d 1106, 1111 [while dual convictions under subdivisions (a) and (b) of Vehicle Code section 23153 for a single act of drunk driving are possible, dual punishment is prohibited by section 654]; accord, *People v. Martinez* (2007) 156 Cal.App.4th 851, 857 [sentences on three of four counts of drunk driving stayed where evidence showed defendant engaged in a single incident of drunk driving].)

Respondent argues that resentencing is unwarranted, as this court may impose a four years, four months sentence on count 1, and impose but stay the same sentence on count 2. We agree. Here, the trial court imposed a four years, four months sentence, and the record supports imposition of that sentence on either count 1 or count 2. Accordingly, we will order the judgment corrected to reflect a sentence of four years, four months on count 1, and the same sentence on count 2, stayed pursuant to section 654. (See *People v. Thompson, supra*, 209 Cal.App.3d at p. 1086 [where no reasonable possibility exists that appellant's sentence would be reduced on remand, any error is harmless and remand is unnecessary].)

DISPOSITION

The abstract of judgment is corrected to reflect the low-term of one-year, four months on count 1, plus a consecutive three-year enhancement pursuant to section 12022.7, subdivision (a) on that count, and the same sentence and enhancement on count 2, stayed pursuant to section 654. As

corrected, the judgment is affirmed. The clerk of the superior court is directed to prepare an amended abstract of judgment and forward it to the Department of Corrections and Rehabilitation.

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MANELLA, J.

We concur:

WILLHITE, Acting P. J.

COLLINS, J.